

### **REMARKS/ARGUMENTS**

As of the Official action mailed March 9, 2005, claims 15-22 and 25-27 are pending with claims 15, 18-22, 25, and 26 standing rejected, and claims 16, 17, and 27 being objected to. Reexamination and reconsideration of the application as amended and in view of the remarks herein is respectfully requested.

As an initial matter, Applicants would like to thank the Examiner for recognizing the allowable subject matter of claims 16, 17, and 27.

#### **Claim Objection**

Claim 15 was objected to for containing a typographical error. Claim 15 has been amended herein to change "slid" to --slide--, as suggested by the Examiner. No new matter is believed entered by this amendment.

#### **Claim Amendments**

Claims 15-18, 20-22 and 25-27 have been amended herein to correct minor grammatical errors or to bring the claims into better correlation with the specification. Claim 19 has been cancelled, without prejudice. No new subject matter is believed entered by these amendments.

#### **Rejections Under 35 U.S.C. §102**

Claims 15, 18-22, 25, and 26 were rejected under 35 U.S.C. §102(b) as being anticipated by Gifford, III et al. (U.S. Patent No. 5,695,504). Applicants respectfully traverse the rejection of these claims over Gifford for the following reasons.

Independent claim 15 is directed at a tissue stapler generally comprising “a tubular member having a tip section, a trigger, and a connecting rod” in which “said connecting rod and said tubular member [are] slidably operable by said trigger to slide said flange member toward said crimping member thereby deploying said staple.” Similarly, independent claim 25 is directed at a staple and stapler comprising, in part, “a tubular member having a tip section, a trigger, and a connecting rod” in which “said connecting rod and said tubular member [are] slidably operable by said trigger to slide said flange member toward said crimping member thereby deploying said staple”.

In contrast to the invention recited by claim 15 and by claim 25, Gifford discloses, in relevant part, a “stapling mechanism 119 [that] has an inner tube 124 and an outer tube 125 which are threaded together at their distal ends. The outer tube 125 has a handle 126 at the proximal end and an annular staple driver 127 at the distal end of the tube. The inner tube 124 has a staple retainer 123 for holding the anchor member 101 of the anastomosis staple 100 on the distal end of the tube.” Col. 16, l. 56-62. Consistent with the disclosure of Gifford, “[t]he outer tube 125 of the stapling mechanism 119 is advanced over the inner tube 124 by rotating the handle 126 of the outer tube 125 with respect to the T-handle 133 of the vessel punch mechanism 120. This advances the staple driver 127 against the attachment legs 105, deforming them into the position shown in FIG. 5C.” Col. 19, l. 8-16.

The stapler disclosed by Gifford, includes an arrangement in which the outer tube is threadably advanced over the inner tube in order to advance the staple driver against the legs of the staple. Accordingly, Gifford fails to disclose a stapler including a tubular member, a trigger, and a connecting rod located within the tubular member and extending between the tip section and the trigger. Furthermore, Gifford does not teach, or even suggest, an arrangement in which

the connecting rod and the tubular member are slidably operable by the trigger to slide a flange member toward a crimping member thereby deploying the staple.

Furthermore, both independent claim 15 and independent 25 recite “said connecting rod having a flange member adapted to hold said staple”. The stapler disclosed by Gifford includes an arrangement in which the “anchor member 101 of the anastomosis staple 100 is held by the staple retainer 123 on the distal end of the inner tube 124 of the stapling mechanism.” Col 17, l. 41-44. Contrary to the Examiner’s assertion, the staple retainer 123 of Gifford does not anticipate the claimed flange. Specifically, as shown in FIG. 3, and described at column 17, lines 41-62, the anchor member 101 of the staple is retained on the end of the inner tube 124 of the stapler by L-shaped gripping fingers 144. The L-shaped gripping fingers include axial slots 145 in the inner tube 124 which connect with transverse slots 146 in the side of the gripping finger 144. “The anchor member 101 of the anastomosis staple 100 is loaded onto the staple retainer 123 by aligning the attachment legs 105 with the ends of the axial slots 145, pushing the attachment legs 105 to the bottom of the axial slots 145, then turning the anchor member 101 counterclockwise until the attachment legs 105 enter the transverse slots 146 in the side of the gripping fingers 144.” This structure is not equivalent to, or even suggestive of, a flange member as claimed. Accordingly, staple retainer 123 according to Gifford does not teach, or even suggest, a “flange member adapted to hold a staple” as recited by each of independent claims 15 and 25.

In view of the foregoing distinctions between Gifford and the claimed subject matter of independent claims 15 and 25, it is respectfully submitted that Gifford does not teach, or even suggest, all of the features of independent claims 15 and 25. Accordingly, Applicants respectfully request that the rejection of claims 15 and 25, and of claims 18, 20-22 and 26

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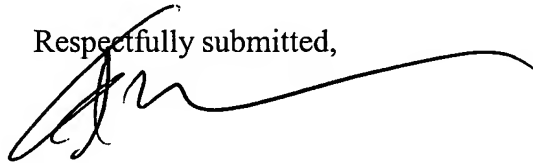
ultimately depending thereupon, be withdrawn upon reconsideration. Claim 19 has been cancelled herein, rendering the rejection thereof moot.

Having overcome all of the outstanding rejections, it is respectfully submitted that the application is now in condition for allowance. Early and favorable action is respectfully solicited.

In the event that there are any fee deficiencies, or additional fees are payable, please charge, or credit any overpayment to, our Deposit Account No. 50-2121.

In the event the Examiner deems personal contact is necessary, please contact the undersigned attorney at (603) 668-6560.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Edmund P. Pflieger', with a long, sweeping horizontal line extending to the right.

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